

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND MICHELLE FISHER, JR.,

Defendant and Appellant.

F063175

(Super. Ct. No. F10904569)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Denise Lee Whitehead, Judge.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

* Before Gomes, Acting P.J., Poochigian, J., and Franson, J.

-ooOoo-

Appellant, Raymond Michelle Fisher, Jr., pled no contest to possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) and admitted three prior prison term enhancements (Pen. Code, § 667.5, subd. (b))¹ and allegations that he had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we affirm.

FACTUAL AND PROCEDURAL HISTORY

On September 6, 2010, Fresno police officers detained Fisher after seeing him holding an open container of beer in public. The officers conducted a parole search after Fisher admitted being on parole. In one of Fisher's socks the officers found a baggie containing rocks of cocaine that weighed a combined total of 1.39 grams.

On May 17, 2011, the district attorney filed an information charging Fisher with possession of cocaine, three prior prison term enhancements, and with having a prior conviction within the meaning of the three strikes law.

On July 5, 2011, in exchange for an indicated sentence of four years, Fisher pled no contest to the possession charge and admitted the prior prison term enhancements and the allegation that he had a prior conviction within the meaning of the three strikes law.

On July 25, 2011, Fisher filed a *Romero*² motion inviting the court to strike his prior strike conviction.

On August 2, 2011, the district attorney filed an amended information that:
1) changed the date of one of two convictions underlying one prior prison term enhancement; and 2) substituted a prior prison term enhancement that was based on

¹ All further statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Fisher's December 13, 1989, conviction for grand theft for a prior prison term enhancement that was based on Fisher's December 9, 1997, conviction for domestic violence (§ 273.5, subd. (a)). The court then allowed Fisher to withdraw his admission of the two pertinent prior prison term enhancements in the original information and took his admission of the two pertinent prior prison term enhancements in the first amended information.

After denying Fisher's *Romero* motion, the court struck Fisher's three prior prison term enhancements and sentenced him to a four-year term, the middle term of two years on his possession of cocaine conviction, doubled to four years because of Fisher's strike conviction.

Fisher's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) However, in a letter filed on February 2, 2012, Fisher appears to contend that section 654 prohibited him from being prosecuted for possession of cocaine because his possession of cocaine on the date of his arrest had already been used to violate his parole and impose a parole term. Fisher is mistaken.

Section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

"The purpose of section 654 is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one offense—the one carrying the highest punishment. [Citation.] The 'act' necessary to invoke section 654 need not be an act in the ordinary sense of a separate, identifiable, physical incident, but may instead be a 'course of conduct' or series of acts violating more than one statute and comprising an indivisible

transaction punishable under more than one statute.” (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135, fn. omitted.)

“[Moreover,] [r]ather than being an ad hoc exercise of clemency, parole is an established variation on imprisonment of convicted criminals. Its purpose is to help individuals reintegrate into society as constructive individuals as soon as they are able, *without being confined for the full term of the sentence imposed*. It also serves to alleviate the costs to society of keeping an individual in prison. *The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abide by certain rules during the balance of the sentence*. Under some systems, parole is granted automatically after the service of a certain portion of a prison term. Under others, parole is granted by the discretionary action of a board, which evaluates an array of information about a prisoner and makes a prediction whether he is ready to reintegrate into society.

“To accomplish the purpose of parole, those who are allowed to leave prison early are subjected to specified conditions for the duration of their terms....

“¶ ... ¶

“The enforcement leverage that supports the parole conditions derives from the authority to return the parolee to prison *to serve out the balance of his sentence if he fails to abide by the rules...*” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477-479, italics added.)

Fisher’s singular act of possessing cocaine resulted in only one conviction, i.e., for possession of cocaine in violation of Health and Safety Code section 11350, subdivision (a). Further, although Fisher’s possession of cocaine also resulted in his parole being revoked because it violated the terms of Fisher’s conditional release, he did not receive any additional punishment as a result of the parole revocation process. Instead, this process merely resulted in Fisher being returned to prison to serve part of a sentence originally imposed on the offense that resulted in Fisher’s prison commitment. Therefore, since the parole revocation process did not result in Fisher being punished for his possession of cocaine offense, the four-year term the court imposed on his conviction for that offense did not violate section 654’s prohibition against multiple punishment.

Further, following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.